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NOT TO BE PUBLISHED IN OFFICIAL REPORTS

IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

FOURTH APPELLATE DISTRICT

DIVISION TWO

SIERRA CLUB et al., Plaintiffs and Appellants, v. MISSION SPRINGS WATER DISTRICT, Defendant and Respondent.	E039194 (Super.Ct.No. RICI043277) **OPINION**

APPEAL from the Superior Court of Riverside County. Dallas Holmes, Judge. Affirmed.

Worden Williams, D. Wayne Brechtel and Terry Kilpatrick for Plaintiffs and Appellants.

Richards, Watson & Gerson, Rochelle Brown and Marguerite P. Battersby for Defendant and Respondent.

This case features a conflict between a real well and a metaphorical well. The metaphorical well is the western honey mesquite, which is a phreatophyte, i.e., "[a] plant with a deep root system that draws its water supply from near the water table." (Oxford

English Dict. (2005 draft rev.) at <http://dictionary.oed.com>, as of Sept. 11, 2006.) This word is derived from the Ancient Greek stems "phreat-," meaning well, and "phyt-," meaning plant. (*Ibid*.) As a phreatophyte, the western honey mesquite depends on access to groundwater.

Sand tends to collect around honey mesquite plants, forming hummocks. In the Coachella Valley, mesquite hummocks support a number of sensitive and even endangered species. Accordingly, the Sierra Club and the Center for Biological Diversity (collectively plaintiffs) filed this proceeding as the champions of the mesquite hummock communities.

The Mission Springs Water District (the District) is the champion of the real well. The District carries out its duty to supply water to portions of the Coachella Valley by pumping groundwater, mainly from the Mission Creek Subbasin. To meet anticipated demand, it wants to drill a new well in the same subbasin. However, due to preexisting pumping, by others as well as by the District, the water table in the subbasin is already falling, placing the mesquite hummocks in jeopardy. The proposed well would only accelerate that process.

To comply with the California Environmental Quality Act (Pub. Resources Code, § 21000 et seq.) (CEQA), the District prepared an environmental impact report (EIR) on the proposed well. The EIR concluded that the adverse effects of the well alone would be insignificant; however, the well, when combined with other ongoing pumping, would have significant cumulative adverse effects on the groundwater level and therefore on the mesquite hummocks. The District nevertheless determined to proceed with the well. It found that "the benefits of providing safe potable water outweigh the Project's

unavoidable adverse environmental effects. Absent this project, the District would not have an adequate supply of safe, potable water for its customers or be able to provide sufficient fire flows, and [the District] has a legal obligation to provide such water."

Plaintiffs contend the EIR was deficient because it analyzed the well's effects on the groundwater level over only a five-year period. They also contend that, even under this deficient analysis, the well's project-specific effects (as opposed to its cumulative effects) would be significant. Finally, they contend that, for both of these reasons, the EIR did not adequately analyze potential mitigation measures.

We will hold that the EIR properly concluded that the project-specific effects would be insignificant. Although it relied on a study that projected the well's effects on the groundwater level for only five years, the EIR itself analyzed the well's effects into the reasonably foreseeable future. Finally, even assuming the EIR erroneously found the project-specific effects to be insignificant, that error did not undermine the adequacy of the EIR as an informational document.

I

FACTUAL BACKGROUND

A. *The Subbasin*.

The District supplies water to a service area of 135 square miles, including Desert Hot Springs and parts of Palm Springs. The District gets all of its water from groundwater, and primarily from an aquifer called the Mission Creek Groundwater Subbasin (Subbasin), although it also has access to three other aquifers.

The Subbasin is confined between the Mission Creek fault and the Banning fault, which act as walls or dams. The Subbasin is estimated to be 1,000 feet thick (although this may be conservative) and to contain 1.3 million acre-feet (AF) of water.

Other users, including the Coachella Valley Water District, pump groundwater from the Subbasin. For example, in 2002, the District extracted about 8,100 AF, the Coachella Valley Water District extracted about 4,400 AF, and private users extracted about 1,500 AF, for a total of 14,000 AF.

Since at least 1955, the Subbasin has been in an overdraft condition, meaning that more water has been extracted from it than has flowed back into it from natural and artificial recharge. As a result, the water level has been falling. In 2000, the District projected that the water level would decline by three feet per year from 1998 through 2018 (a total of 60 feet), increasing to six feet per year by 2048. Since then, the District has, in fact, seen a decline of two to three feet per year. However, no water balance studies have been done, and a safe yield for the Subbasin has not been established.

The only practical way to prevent or to remedy overdrafting would be to recharge the Subbasin with imported water. The District can obtain imported water, however, only from the State Water Project water contractor, which is the Desert Water Agency (Desert). As part of a demonstration project, Desert built recharge ponds and successfully recharged the Subbasin with about 4,700 AF of imported water. Thereafter, however, the District and Desert became embroiled in litigation over the recharge

program, and there was no way of knowing whether Desert would supply any more water.[1]

Meanwhile, the District's need for water has been increasing steadily. It is in urgent need of new water sources. Accordingly, it has proposed to drill a new well and to build related facilities (the Project). The Project would extract 2,429 AF per year, or 2,000 gallons per minute, from the Subbasin. Thus, it would cause an estimated 18 percent increase in total annual production from the Subbasin.[2]

B. *The Mesquite Hummock Communities*.

Western honey mesquite is a shrub or small tree. In an arid environment, it can survive on groundwater, using its extensive root system and deep taproot. Mesquite bushes tend to hug the ground, and wind-blown sand tends to accumulate around them, forming hummocks. In the Coachella Valley, mesquite hummocks "provide core ecological values and/or dispersal linkages" for several sensitive animal and plant species, including the Palm Springs ground squirrel, the Palm Springs pocket mouse, Le Conte's thrasher, and the Crissal thrasher, all California species of special concern;

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[1] After the EIR was certified, the District and Desert settled their litigation. Apparently they also agreed that Desert would provide some imported water to recharge the Subbasin. It is not clear from the record, however, exactly how much water Desert agreed to provide.

[2] Plaintiffs assert that the Project would increase the overdraft by 25 percent. They cite a statement in the EIR that "[t]he cumulative contribution of the proposed project to overdraft is relatively small, about 1/4 of the existing overdraft." However, if the Project would increase total production by 18 percent, then due to recharge, it would increase the overdraft by less than 18 percent. Thus, it appears that "1/4" was not meant to be an exact figure.

the fringe-toed lizard, a state endangered species; and the Coachella Valley milkvetch, a federal endangered species.

Between 1939 and 1998, mesquite hummock acreage in the Coachella Valley declined by almost 90 percent (from 8309 acres to 870 acres). "[T]he remaining mesquite hummocks are highly fragmented and recruitment of new individuals is in question."[3] One group of mesquite hummocks can be found about a mile from the Project, along the southeast portion of the Banning fault. This may be because the Banning fault, by acting as a dam, raises the edge of the water table. Also, the ground slopes downward toward the east, so that plants there are closer to the water table. Aerial photographs taken between 1953 and 2001 showed that the westernmost mesquite hummocks in this group had already begun to die off.

C. *The Preparation of the EIR*.

1. *Effects on Groundwater Quantity*.

The District determined that CEQA required it to prepare an EIR for the Project. It hired a company called Psomas to analyze the Project's effects on the groundwater level. Psomas used a mathematical model of the Subbasin to simulate the results of operating the Project for five years.

Psomas reported that, because the Project could extract the groundwater below it faster than the surrounding groundwater could flow in,[4] it would cause a shallow "cone

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[3] The word "recruitment," when applied to plants, seems humorous to us, but apparently it is a botanical term of art.

[4] As one expert explained, "[G]roundwater does not move at lightning speed. . . . [T]hink of it as moving literally at a snail's pace."

of depression" in the water table, which would grow wider and deeper over five years. At the end of five years, the water directly under the Project would be 5 to 7 feet lower than it would otherwise have been; the water at the point on the Banning fault closest to the Project would be 3.8 feet lower; and the water along the Banning fault in the vicinity of the mesquite hummocks would be 1.5 to 2 feet lower. Over five years, without the Project, the water table along the Banning fault would fall an average of 0.7 feet per year; with the Project, it would fall an average of 1.0 feet per year. Thus, the Project would increase the average fall by 0.3 feet per year, or about 43 percent.

The EIR found that the Project's individual adverse effects on groundwater quantity would be insignificant. It explained: "The 2,429 acre-feet per year . . . extraction . . . by the project well represents about 0.2 percent of the 1.3 million AF of water projected to be in storage in the [Subbasin]. Based on the projected volume of water in storage in [the Subbasin] and the project's relatively small contribution to subbasin overdraft, potential impacts to the quantity of water in storage are considered less than significant." (Emphasis omitted.) However, it found that the cumulative adverse effects of the Project, when combined with other extractions from the Subbasin, would be significant.

The only feasible mitigation measure that the District was not already using would be to recharge the Subbasin with imported water. The District had been trying to get imported water from Desert; Desert, however, had not yet agreed to provide it. "The District ma[de] a commitment to recharge 3,000 AF of imported water to offset the additional pumping of approximately 2,500 AF (a 1.2:1 ratio) as soon as it is legally and

technically feasible." The EIR concluded, however, that "no mitigation is currently available . . . ."

In response to comments, the final EIR stated: "The 5-year analysis . . . was established because it is considered the extent of time that a reasonable projection of this well[']s effect on the [S]ubbasin could be made and it also reflects what is considered the maximum drawdown effect this well will individually have . . . . Projection . . . beyond this period, especially the next 45 years, is totally speculative and would not be relevant to the project, the operation of this one well." It added that the Project's adverse effect on groundwater quantity was individually insignificant but cumulatively significant and that "[a]n attempt at modeling groundwater production and groundwater levels in the year 2050 would result in the same conclusions . . . ."

2. *Effects on Offsite Biological Resources.*

There had been no studies of the effects of groundwater depletion on western honey mesquite. Studies indicated that honey mesquite "commonly" has taproots 40 feet deep, and "[t]aproots of approximately 175 to 190 feet . . . ha[ve] been observed . . . ." The existing mesquite hummocks were an estimated 80 to 90 feet above groundwater. It appeared that mesquite hummocks could flourish "when groundwater depths are in the neighborhood of 100 feet or less." An appendix to the EIR noted, however: "As no systematic long[-]term study of the groundwater levels and their impact on flora has been conducted in the [area], there is no conclusive proof that groundwater decrease is or is not impacting the hummocks."

On the other hand, according to a monograph submitted by the United States Fish and Wildlife Service, in the Coachella Valley, mesquite had historically grown only

where there was groundwater at a depth of about 35 to 50 feet. Although "exceptional mesquite individuals" may have taproots up to 160 feet long, most mesquite communities will disappear if the groundwater falls more than 45-50 feet below the surface. Existing mature plants may not die immediately, but they cannot reproduce. One large mesquite community in Arizona had survived a drop of the water table to about 50 feet, but it had not survived a drop to 108 feet.

The EIR concluded: "At this time, there is insufficient data to definitively identify the potential impacts to the mesquite hummocks and the biotic resources that exist within and rely upon th[em]." The "cumulative contribution of the proposed project to overdraft is relatively small . . . . Thus, if the well is not installed and operated, the potential impacts to the Mesquite Hummock habitat will occur regardless, it will simply require an additional one to two years before the forecast impact will occur. . . . Given the 5-year time horizon, the groundwater table lowering will only marginally [a]ffect the western edge of the Mesquite Hummock habitat. It will take many years, not yet quantifiable, before large areas of the Hummock habitat [are] affected by the declining groundwater table." The final EIR added: "The project-specific effects of the well would require more than 30 years to adversely impact the mesquite hummocks."

The EIR found that the Project's individual adverse effects on offsite biological resources would be insignificant; however, its cumulative adverse effects on offsite biological resources would be significant.

The final EIR rejected a comment that artificial irrigation should have been considered as a mitigation measure: "The hummocks are not situated on land owned or

controlled by the District. Therefore, it has no authority to implement mitigation measures such as irrigation on these parcels."

II

STANDARD OF REVIEW

"[W]e review the administrative record to determine whether the agency abused its discretion. [Citation.]" (*State Water Resources Control Bd. Cases* (2006) 136 Cal.App.4th 674, 723.) "The absence of information from the EIR '"does not per se constitute a prejudicial abuse of discretion. [Citation.]"' [Citation.] A prejudicial abuse of discretion occurs '"if the failure to include relevant information precludes informed decisionmaking and informed public participation, thereby thwarting the statutory goals of the EIR process." [Citation.]' [Citations.]" (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.* (2001) 91 Cal.App.4th 1344, 1355, quoting *Al Larson Boat Shop, Inc. v. Board of Harbor Commissioners* (1993) 18 Cal.App.4th 729, 748 and *San Joaquin Raptor/Wildlife Rescue Center v. County of Stanislaus* (1994) 27 Cal.App.4th 713, 722.)

"'"An evaluation of the environmental effects of a proposed project need not be exhaustive, but the sufficiency of an EIR is to be reviewed in the light of what is reasonably feasible. . . ." [Citations.] Technical perfection is not required; the courts have looked not for an exhaustive analysis but for adequacy, completeness and a good-faith effort at full disclosure. [Citations.]' [Citation.]" (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.*, *supra*, 91 Cal.App.4th at p. 1355, quoting *Rio Vista Farm Bureau Center v. County of Solano* (1992) 5 Cal.App.4th 351, 368, quoting Cal. Code Regs., tit. 14, § 15151.) "Courts are 'not to determine whether the EIR's ultimate conclusions are correct but only whether they are supported by substantial evidence in

the record and whether the EIR is sufficient as an information document.' [Citation.]" (*Bakersfield Citizens for Local Control v. City of Bakersfield* (2004) 124 Cal.App.4th 1184, 1197, quoting *Association of Irritated Residents v. County of Madera* (2003) 107 Cal.App.4th 1383, 1391.)

"In sum, the determination of EIR adequacy is essentially pragmatic. Whether an EIR will be found in compliance with CEQA involves an evaluation of whether the discussion of environmental impacts reasonably sets forth sufficient information to foster informed public participation and to enable the decision makers to consider the environmental factors necessary to make a reasoned decision. Preparing an EIR requires the exercise of judgment, and the court in its review may not substitute its judgment, but instead is limited to ensuring that the decision makers have considered the environmental consequences of their action." (*Berkeley Keep Jets Over the Bay Com. v. Board of Port Cmrs.*, *supra*, 91 Cal.App.4th at p. 1356.)

III

PROJECT-SPECIFIC VERSUS CUMULATIVE EFFECTS

Plaintiffs claim that the EIR improperly mischaracterized project-specific indirect effects as cumulative effects, and it therefore erroneously concluded that the project-specific effects would be insignificant.

"The cumulative impact from several projects is composed of the incremental environmental impact of the project at hand added to others that are closely related. 'Cumulative impacts can result from individually minor but collectively significant projects taking place over a period of time.' [Citation.]" (*Defend the Bay v. City of Irvine* (2004) 119 Cal.App.4th 1261, 1266-1267, quoting Cal. Code Regs., tit. 14,

§ 15355, subd. (b).) By contrast, "project-specific effects," as relevant here, are "all the direct or indirect environmental effects of a project *other than cumulative effects* . . . ." (Pub. Resources Code, § 21065.3, italics added.)

"An EIR might conclude that the cumulative impact is significant even though the project-specific impact is not when, *e.g.*: [¶] A new project will emit a relatively small quantity of air pollutants, but there is an existing air quality problem in the area; or [¶] A new project will contribute a relatively small amount of traffic to an intersection, but the intersection is already operating at an unacceptable level of service . . . ." (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act (Cont.Ed.Bar 2005) § 13.37, p. 667.)

"Direct" effects "are caused by the project and occur at the same time and place." (Cal. Code Regs., tit. 14, § 15358, subd. (a)(1).) "Indirect" effects "are caused by the project and are later in time or farther removed in distance, but are still reasonably foreseeable." (*Id*., subd. (a)(2).) The only apparent reason, however, for distinguishing between direct and indirect effects is to make sure that an agency does not confine its analysis solely to direct effects, but rather analyzes both. (See, e.g., Cal. Code Regs., tit. 14, §§ 15096, subd. (g)(1) [responsible agency is responsible for mitigating "the direct or indirect . . . effects" of its portion of the project], 15126.2, subd. (a) [EIR shall identify and describe "[d]irect and indirect significant effects of the project"], 15360 ["environment" is defined with reference to "the area in which significant effects would occur either directly or indirectly as a result of the project"].)

Here, under these definitions, the project-specific effect on groundwater quantity would be to remove 2,429 AF per year. This would be a direct effect. The project-

specific effect on offsite biological resources would be to destroy the mesquite hummocks one or two years before they would otherwise be destroyed.[5] This, too, was probably a direct effect, as it would occur in the area of, and most likely during the life of, the Project; however, its precise characterization in this respect is not important. The crucial point is that the EIR did not improperly characterize these as cumulative effects.

We proceed to consider whether it improperly characterized them as insignificant.

IV

THE SIGNIFICANCE OF THE PROJECT'S EFFECTS

Plaintiffs claim that the EIR erroneously concluded that the project-specific effects of the Project would be insignificant. They also claim that this error was compounded by the erroneous failure to consider the effects of the Project beyond a five-year period.

A. *The Project-Specific Effects on Groundwater Quantity*.

1. *During the First Five Years*.

The EIR's threshold of significance for an impact on groundwater quantity was whether the Project would "[s]ubstantially deplete groundwater supplies . . . such that there would be a net deficit in aquifer volume or a lowering of the local groundwater table level[.]" This is a legally appropriate threshold. (Cal. Code Regs., tit. 14, appen. G, § VIII, subd. (b); see also 1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, *supra*, § 13.2, p. 623.) The EIR then concluded that the project-specific effect on groundwater quantity would be insignificant because the Project would reduce

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[5] At oral argument, plaintiffs claimed that there was no evidence to support this prediction. Previously, they had never raised this claim; to the contrary, they relied heavily on this prediction to support their case. We deem any challenge to it waived.

the total amount of water in the Subbasin by only 0.2 percent per year. This conclusion was not unreasonable. "An agency may find that an impact to the environment is less than significant if it concludes that the impact is not a substantial adverse change; it need not find a zero impact to conclude that it is less than significant. [Citation.]" (1 Kostka & Zischke, Practice Under the Cal. Environmental Quality Act, *supra*, § 13.2, p. 619.)

Plaintiffs argue that increasing the total rate of extraction from Subbasin by 18 percent and accelerating the lowering of the water table along the Banning fault by 43 percent must be deemed substantial effects. The EIR, however, could reasonably gauge substantiality against total quantities, rather than against extraction rates. For example, if the current rate of extraction was zero, then any new well would increase this rate by infinity, even though its effect on current total water quantity might be trivial. In any event, "[w]e may not set aside an agency's approval of an EIR on the ground that an opposite conclusion would have been equally or more reasonable." (*Citizens of Goleta Valley v. Board of Supervisors* (1990) 52 Cal.3d 553, 564.)

2. *After the First Five Years.*

As noted, plaintiffs also contend that the EIR improperly limited its analysis of the Project's effects to a five-year period. We disagree. The Psomas report, on which the EIR admittedly relied, limited its analysis to a five-year period. The EIR itself, however, was not so limited.

An EIR is to "giv[e] due consideration to both the short-term and long-term effects" of the project. (Cal. Code Regs., tit. 14, § 15126.2, subd. (a).) "Drafting an EIR . . . necessarily involves some degree of forecasting. While foreseeing the unforeseeable is not possible, an agency must use its best efforts to find out and disclose

all that it reasonably can." (Cal. Code Regs., tit. 14, § 15144.) However, "[i]f, after thorough investigation, a lead agency finds that a particular impact is too speculative for evaluation, the agency should note its conclusion and terminate discussion of the impact." (Cal. Code Regs., tit. 14, § 15145.)

Preliminarily, the District claims that any analysis over a longer period would have been speculative. We do not necessarily agree. There is no evidence that the District came to this conclusion "after thorough investigation," as required, or indeed, after any investigation at all. The record does not indicate whether the District told Psomas to limit its study to a five-year period, or Psomas made this decision itself; and, either way, it does not indicate any reason for this decision.

The final EIR stated that "[t]he 5-year analysis . . . was established because it is considered the extent of time that a reasonable projection of the well[']s effect on the subbasin could be made and it also reflects what is considered the maximum drawdown effect this well will individually have . . . ." This was self-contradictory: It could be true that drawdown beyond five years could not be predicted, or it could be true that, after five years, drawdown would be at maximum and would not increase; but both could not be true.

However, the final EIR also stated that an analysis over a longer time period would not have affected the overall conclusion that the Project's project-specific effects were insignificant. With respect to groundwater quantity, this conclusion is supported by substantial evidence. The Project was going to pump the same amount of water year in and year out. The EIR reasoned that reducing the total quantity of 1.3 million AF by

2,429 AF per year, or 0.2 percent, was not substantial. This reasoning held good even after five years.

B. *The Project-Specific Effects on Offsite Biological Resources.*

1. *During the First Five Years.*

The EIR's threshold of significance for an impact on biological resources included whether the project would have (1) "[a] substantial adverse effect . . . on any species identified as a candidate, sensitive, or special status species . . . ," or (2) "[a] substantial adverse effect on any . . . sensitive natural community . . . ."[6] Once again, this is a legally appropriate threshold. (Cal. Code Regs., tit. 14, appen. G, § IV, subds. (a), (b).) The project-specific effect on the mesquite hummocks would be to hasten their inevitable disappearance by one or two years. The EIR could reasonably conclude that this was not a substantial adverse effect.

2. *After the First Five Years.*

Once again, plaintiffs argue that the EIR improperly limited its analysis of the Project's effects to a five-year period. In response, the District asserts: "It is clear from

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[6] Actually, the second prong required "[a] substantial adverse effect on any . . . sensitive natural community *identified in local or regional plans, policies, or regulations, or by the California Department of Fish and Game or U.S. Fish and Wildlife Service.*" (Italics added.) The western honey mesquite itself is not a sensitive species, and our attention has not been called to any official recognition of mesquite hummocks as a sensitive natural community. While the proposed Coachella Valley Multiple Species Habitat Conservation Plan would designate them as such (see <http://www.cvmshcp.org/species.htm>, as of Sept. 11, 2006), that plan has not yet been approved or adopted. Thus, at least arguably, the elimination of the mesquite hummocks would not be a significant effect, except to the extent that this had a significant effect on the sensitive species that depend on them.

the EIR that the cumulative impact of the current pumping of water from the [Subb]asin . . . , plus pumping from the Project . . . , is expected to begin causing the death of mesquite hummocks by the end of Year 5 . . . ." It concludes: "Analyzing the issue over more than five years will not add any other information."

The District's position lacks support in the record. The EIR never actually said the mesquite hummocks would start to disappear in five years. To the contrary, it stated: "At this time, there is insufficient data to definitively identify the potential impacts to the mesquite hummocks . . . ." It did concede that "[i]n year 5, the effects of all groundwater pumping *could* lower groundwater levels to about 90 feet b[elow] g[round] s[urface] in the vicinity [of the western edge of the mesquite hummocks]. This is approaching the depth that *may* adversely affect the growth of mesquite." (Italics added.) It added, however: "Given the 5-year time horizon, the groundwater table lowering will only marginally [a]ffect the western edge of the Mesquite Hummock habitat. It will take many years, not yet quantifiable, before large areas of the Hummock habitat [are] affected . . . ."

We consider the EIR's analysis to be adequate, but for a different reason. There was substantial evidence that the Project's individual effects on offsite biological resources during the first five years would be typical of (or might even overstate) its effects over its lifetime. The Psomas report indicated that, over the first five years, the Project would lower the water level along the Banning fault an average of 0.3 feet per year. During this time, the cone of depression would widen and deepen in what appears to be a roughly predictable fashion. At a public hearing, the District's expert indicated

that the average of 0.3 feet per year could be relied on for 30 years.[7] There was evidence that the existing hummocks were 80 to 90 feet above groundwater, and that mesquite hummocks in general could remain viable at least 100 feet above groundwater. If the project-specific effect on the groundwater under the hummocks would be to cause it to fall not more than 0.3 feet per year, it would fall not more than 9 feet in 30 years. The final EIR therefore concluded: "The project-specific effects of the well would require more than 30 years to adversely impact the mesquite hummocks."

The EIR also stated that, in light of all the other pumping going on in the Subbasin, the Project alone could do no more than cause the mesquite hummocks to be impacted a year or two earlier than they otherwise would. Once again, the conclusion that this effect was insignificant held good beyond the first five years. Thus, the EIR could properly conclude that the project-specific effects on offsite biological resources would remain insignificant for the reasonably foreseeable future.

V

PREJUDICE

Even assuming the EIR erred by finding that the project-specific effects would be insignificant, we agree with the District -- the error was not prejudicial, in light of the EIR's additional finding that the cumulative effects would be significant.

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[7] This projection would actually tend to overstate the effect on groundwater levels. As a matter of common sense, if the same volume of water is removed every year, but the cone of depression gets ever wider, then the surface of the cone must fall ever more slowly. Moreover, as the surface of the cone gets wider and deeper, this greater surface area will allow more water to flow into and partially recharge the cone.

CEQA does not require an EIR to analyze project-specific effects separate and apart from cumulative effects. It simply requires an EIR to find that the effects of a project would be significant if they would be "cumulatively considerable." (Pub. Resources Code, § 21083, subd. (b)(2); see also Cal. Code Regs., tit. 14, § 15130.) Thus, it seeks to prevent an EIR from sweeping significant cumulative effects under the rug by considering only insignificant project-specific effects. (See, e.g., *Bakersfield Citizens for Local Control v. City of Bakersfield, supra,* 124 Cal.App.4th at pp. 1213-1219.) Mislabeling a project-specific effect as a cumulative effect does not preclude informed decisionmaking, provided the effect is found to be significant and is dealt with as such.

Plaintiffs argue, however, that such mislabeling is prejudicial in two respects. First, they argue that it affects the amount of disclosure required. Our standard of review with respect to both project-specific and cumulative effects, however, is the same: It is whether a failure to include relevant information precluded informed decisionmaking and informed public participation. Admittedly, the CEQA guidelines provide that "[t]he discussion of cumulative impacts . . . need not provide as great detail as is provided for the effects attributable to the project alone." (Cal. Code Regs., tit. 14, § 15130, subd. (b).) This follows, however, from the generally applicable standard of reasonableness; an agency is likely to know more about the individual effects of its own project than about cumulative effects. The CEQA guidelines immediately go on to say that "[t]he discussion [of cumulative impacts] should be guided by the standards of practicality and reasonableness . . . ." (*Ibid.*) The CEQA guidelines also provide that "an agency must use its best efforts to find out and disclose all that it reasonably can." (Cal. Code Regs.,

tit. 14, § 15144.) Still, as noted earlier, the mere absence of information from an EIR is not a prejudicial abuse of discretion per se.

According to plaintiffs, by characterizing the significant effects on offsite biological resources as cumulative, the EIR avoided fully analyzing and disclosing those effects. We agree with the trial court, however, that plaintiffs have not shown that there was anything else that the EIR could have disclosed. There was disagreement among the experts as to how low the groundwater could sink before the mesquite hummocks would disappear. There had been no studies of the effects of groundwater depletion specifically on western honey mesquite. Moreover, how much the groundwater under the mesquite hummocks had already sunk could only be estimated. Certainly the Psomas report could have gone out beyond five years, but it is hard to see how having more precise information about the project-specific decline in the water level would have helped, given the imprecision of all the other available information. At oral argument, plaintiffs claimed for the first time that the EIR failed to disclose the precise nature of any adverse effect on the mesquite hummock communities. This belated claim has been waived.

The EIR stated: "This document utilizes conservative (worst case) assumptions in making impact forecasts based on the assumption that impact forecasts should over predict (if they cannot be absolutely quantified) consequences, rather than under predict them." Thus, even though it could not say precisely when the mesquite hummocks would disappear, it did conclude that the Project would have a cumulatively significant adverse effect on them. Anyone who read the EIR would have understood that the Project should not be approved unless its benefits outweighed the cost of accelerating not only the emptying of the Subbasin, but also the disappearance of the mesquite

hummocks, and that the mesquite hummocks might begin to disappear in as little as five years.

Second, plaintiffs argue that mislabeling project-specific effects as cumulative effects allowed the District to shirk its responsibility for mitigating those effects. As plaintiffs concede, however, an EIR must consider mitigation measures for *any* significant effects of the project, whether project-specific or cumulative. (Pub. Resources Code, § 21081, subd. (a); Cal. Code Regs., tit. 14, § 15130, subd. (b)(5).) And, once again, our standard of review for mitigation measures with respect to both project-specific and cumulative effects is the same: "With regard to the discussion of mitigation measures, an EIR need not be exhaustive or perfect; it is simply required to 'describe feasible measures which could minimize significant adverse impacts.' [Citations.] We review the EIR's discussion of mitigation measures by the traditional substantial evidence standard. It is not our task to determine whether adverse effects could be better mitigated. [Citations.]" (*San Franciscans Upholding the Downtown Plan v. City and County of San Francisco* (2002) 102 Cal.App.4th 656, 696, quoting Cal. Code Regs., tit. 14, § 15126.4, subd. (a)(1).)

It is true that cumulative effects, by their very nature, may not be as susceptible to mitigation as project-specific effects. Thus, the CEQA guidelines provide that: "With some projects, the only feasible mitigation for cumulative impacts may involve the adoption of ordinances or regulations rather than the imposition of conditions on a project-by-project basis." (Cal. Code Regs., tit. 14, § 15130, subd. (c).) In an appropriate case, "a project's contribution to a significant cumulative impact" can be mitigated by requiring "the project . . . to implement or fund its fair share of a mitigation

measure or measures designed to alleviate the cumulative impact." (*Id.*, subd. (a)(3).) The EIR here, however, did not propose mitigation either by way of an ordinance, a regulation, or "fair share" funding.

Given the nature of the Project here, the mitigation analysis was a no-brainer -- the only way to avoid its significant effects was to *get other water*. The EIR explained precisely why this was not feasible: "[T]he only feasible method of eliminating subbasin overdraft . . . is the use of imported water." However, the only source of imported water was Desert, and the District and Desert were currently in litigation. The District, however, did promise to try to obtain imported water from Desert and, if and when it succeeded, to use that water to recharge the Subbasin. Indeed, it promised to recharge 3,000 AF for every 2,500 AF it withdrew.

Plaintiffs suggest that the District could recharge the Subbasin with water from the District's other aquifers. The EIR did analyze the possibility of using water from these other aquifers as an *alternative* to the Project; it rejected this alternative, however, because building a well in a different aquifer would have unforeseeable effects on biological and cultural resources, and because it would increase construction and energy costs. Although the EIR did not expressly analyze the possibility of using water from other aquifers as a *mitigation measure*, it requires no great leap to conclude that this, too, was infeasible. An agency is not required "to consider a mitigation measure which itself may constitute a project at least as complex, ambitious, and costly as the . . . project itself." (*Concerned Citizens of South Central L.A. v. Los Angeles Unified School Dist.* (1994) 24 Cal.App.4th 826, 842.)

Plaintiffs also suggest that the District should go out and "water[] the mesquite hummocks." The EIR, however, rejected this as infeasible, because the District did not own the land on which the mesquite hummocks were located. This conclusion is supported by substantial evidence.

We conclude that, by finding that the project's effects -- whether labeled project-specific or cumulative -- would be significant, and by adequately disclosing both the nature of those effects and the feasibility of mitigating them, the EIR satisfactorily performed its informational function.

VI

DISPOSITION

The judgment is affirmed. The District is awarded costs on appeal against plaintiffs.

NOT TO BE PUBLISHED IN OFFICIAL REPORTS

RICHLI
J.

We concur:

RAMIREZ
P.J.

HOLLENHORST
J.